

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

IN RE:

COLONEL of NEW CASTLE COUNTY POLICE DEPARTMENT

Representation Petition No. 94-01-097

New Castle County (hereinafter "County") is a public employer within the meaning of §1602(l) of the Police Officers' and Firefighters' Employment Relations Act, 19 Del.C. Chapter 16 (hereinafter "Act"). The Colonel or Chief of the New Castle County Police Department is a public employee within the meaning of 19 Del.C. §1602(k). AFSCME, Council 81, Local 3109 is an employee organization within the meaning of 19 Del.C. §1602(f).

On January 31, 1994, New Castle County filed a representation petition seeking to amend the existing bargaining unit of Managers and Administrators of which AFSCME Local 3109 is the exclusive bargaining representative. The petition seeks to remove the position of Colonel of the New Castle County Police from the bargaining unit because it is the only position in the unit covered by the Police Officers' and Firefighters' Employment Relations Act, as administered by the Public Employment Relations Board (hereinafter "PERB").¹ The County states in its petition that the Colonel is the only bargaining unit employee who serves at the pleasure of the County Executive.

On February 23, 1994, AFSCME filed its response to the County's petition. It asserts that in 1986, when the New Castle County Police Captains and Majors were severed from the Managers and Administrators bargaining unit, the PERB did not

¹ All other employees in the bargaining unit are covered by the Right of Public Employees to Organize, 19 Del.C. Chapter 13, as administered by the Governor's Council on Labor.

remove the Colonel from the unit at that time "due to his duties and responsibilities". It further stated that because the Colonel is a member of Local 3109, jurisdiction in this case remains with the Governor's Council on Labor.

The PERB convened an informal conference in this case on March 8, 1994. During that conference the parties agreed that the Colonel is, and has been, covered by the Police Officers and Firefighters Employment Relations Act since its effective date of September, 1986, and is, therefore, subject to the jurisdiction of the Public Employment Relations Board. This is consistent with the holding in In the Matter of the Unit Clarification Petition of FOP Lodge No. 5, et al., Rep. Pet. 86-12-008 (Del. PERB, 1987).² The Executive Director further clarified that the Police Colonel was ineligible for inclusion in a bargaining unit governed by 19 DeL.C. Chapter 13, because police officers are expressly excluded from that statutes coverage.

As a result of the informal conference the parties agreed to submit their positions with respect to status of the position of Colonel insofar as the relationship, if any, with AFSCME, Local 3109, as the bargaining representative.

The County filed its position on March 29, 1994. It argues that because the PERB has determined that the Colonel is ineligible as a matter of law for inclusion in the existing Managers and Administrators bargaining unit, the position is therefore a "non-bargaining unit position". It asserts that AFSCME retains no representational rights if the Colonel is severed from the bargaining unit. Because the position is ineligible for inclusion in a bargaining unit with other non-police employees, the Colonel could be represented only after the position becomes part of an appropriate bargaining unit under PERB representation procedures.

AFSCME declined to file a position statement.

² This decision held that police officers were expressly removed from the coverage of 19 DeL.C. Chapter 13 by the passage of the Police Officers' and Firefighters Act.

This case presents a unique situation because of the existing public sector labor laws in Delaware. The Right of Public Employees to Organize, 19 Del.C. Chapter 13, covered all public sector employees until 1984.³ That statute has been amended three times in the last ten years to explicitly exclude all public school employees, police officers and firefighters from its coverage. Chapter 13 provides for representation procedures to be administered by the Governor's Council on Labor, creates the obligation to collectively bargain, and provides the parties the opportunity to mutually agree to mediate negotiation impasses.

Public school employees, police and firefighters who were removed from the coverage of 19 Del.C. Chapter 13 were placed under the jurisdiction of the PERB which administers two statutes. Each of these similar statutes provides for the resolution of unfair labor practice charges, the issuance of declaratory statements applying the law, representation procedures and mandatory impasse resolution procedures. These new laws did not, however, require the PERB to recertify or otherwise examine existing bargaining units. As jurisdiction was transferred from the Governor's Council to the PERB, existing bargaining units and the status of their exclusive representatives remained in tact until a question concerning representation was properly raised under the PERB statutes.

The PERB has consistently held that where a question concerning representation is properly raised, it will make its determination of appropriateness based upon the petition before the Board. Where parties are able to mutually agree as to the composition of a bargaining unit and where their agreement does not violate

³ In 1984, the Public School Employment Relations Act was passed, the PERB was created and professional public school employees were explicitly excluded from coverage of Chapter 13. In 1986, police officers and firefighters were explicitly excluded from Chapter 13 coverage, and a statute (19 Del.C. Chapter 16) was created which mirrored the provisions of the public school act placing these employees under the jurisdiction of the PERB. The public school act was amended in 1990 to also cover all other public school employees.

the statutory mandates, in the interest of promoting harmonious and cooperative relationships, the PERB has not arbitrarily superseded the desires of the parties by certifying an equally appropriate alternative unit. Similarly, the PERB has not raised an issue concerning the propriety of an existing bargaining unit independent of a petition from an interested party.

In 1986, the PERB processed a representation petition which removed Captains and Majors of the New Castle County Police Department from the bargaining unit of Managers and Administrators. That petition initially sought to also remove the Colonel from the bargaining unit, but the parties agreed to delete the Colonel from the petition when that position became the only remaining obstacle to its mutual resolution. The PERB did not make a ruling concerning the status of the Colonel under the Police Officers' and Firefighters Act, nor did it make any ruling as to the confidential nature of that position.

The present petition raises for the first time the status of the Colonel and the appropriateness of the inclusion of that position in the existing bargaining unit of Managers and Administrators. It should be noted that this case presents a circumstance which is unique to New Castle County and specifically to the Colonel of the Police Department. Having determined that 1) the Colonel is ineligible for continued inclusion in the Managers and Administrators bargaining unit, and 2) the PERB has exclusive jurisdiction over the Colonel because police officers are excluded from coverage under Chapter 13, the position of Colonel is removed from the existing bargaining unit.

The representation obligation of an exclusive bargaining representative arises specifically from the certification of a labor organization, consistent with the wishes of the bargaining unit members as expressed through an election. The union's obligation is to represent the members of the bargaining unit, as defined by the classifications set forth in the unit definition, and is not an obligation to

represent individual persons or positions independent of the bargaining unit. Consequently, when the bargaining unit is amended to exclude a position, the duty to represent that position does not continue. Should employees desire to be represented, the statute provides procedures by which this can be accomplished.

CONCLUSION

Based on the foregoing, the position of Colonel of the New Castle County Police Department is hereby removed from the bargaining of Managers and Administrators, as defined in DOL Case. 100. Having so amended the unit, AFSCME Local 3109 remains the exclusive bargaining representative of the bargaining unit; however, because the Colonel is no longer included within the bargaining unit definition, AFSCME is relieved of its obligation to represent the position of Colonel.

IT IS SO ORDERED.

/s/ Deborah L. Murray-Sheppard
DEBORAH L. MURRAY-SHEPPARD
Principal Assistant
Delaware Public Employment Relations Bd.

/s/ Charles D. Long, Jr.
CHARLES D. LONG, JR.
Executive Director
Delaware Public Employment Relations Bd.

DATED: June 22, 1994